

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 213

RIN 3206-AJ53

#### Excepted Service—Schedule A Authority for Chinese, Japanese, and Hindu Interpreters

**AGENCY:** Office of Personnel  
Management

**ACTION:** Final regulations.

**SUMMARY:** The Office of Personnel Management (OPM) is revoking the Schedule A excepted service appointing authority for Chinese, Japanese and Hindu interpreters because the conditions justifying the original exception no longer exist. Revocation brings the positions filled under this Schedule A authority into the competitive service. It also permits the noncompetitive conversion of persons serving under the authority to either competitive or excepted service appointments.

**DATES:** *Effective date:* November 21, 2002.

*Compliance date:* Agencies may move any incumbents from § 213.3102(f) authority by February 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** Christina Vay on 202-606-0960.

**SUPPLEMENTARY INFORMATION:** The Governmentwide Schedule A authority, 5 CFR 212.3102(f), was established in 1903. Competitive examining to fill Federal jobs has changed drastically in the almost 100 years since this authority's creation. Agencies can now successfully examine for positions with specific language requirements. They already do so for interpreters of many languages, including Chinese, Japanese, and Hindu.

Proposed regulations were published January 23, 2002 (67 FR 3128). We received two comments from agencies

supporting the revocation. Because we did not receive comments to support continuing the authority, we are continuing with our proposal to revoke it.

Agencies may no longer appoint persons under this authority as of November 21, 2002. Agencies will have 90 days from the date of publication to move the employees currently serving under § 213.3102(f) to the competitive service. The authority to retain persons in the competitive service based on revocation of an excepted appointing authority is 5 CFR 316.702.

We recognize the fact that agencies have critical workforce skill gaps for positions requiring foreign language skills. The General Accounting Office reported this in their January 2002 report on correcting foreign language staffing and proficiency shortfalls. However, almost all of the agencies identified in the report operate different personnel systems that do not follow OPM regulations. Consequently, the Schedule A we are revoking does not affect or help their efforts to fill the skill gaps.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

#### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### List of Subjects in 5 CFR Part 213

Government employees. Reporting and recordkeeping requirements.

Office of Personnel Management.

**Key Coles James,**  
*Director.*

Accordingly, OPM is amending 5 CFR part 213 as follows:

#### PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

**Authority:** 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38

U.S.C. 4301 *et seq.*; and Pub. L. 106-117 (113 Stat. 1545).

#### § 213.3102 [Amended]

2. Paragraph (f) of § 213.3102 is removed and reserved.

[FR Doc. 02-29440 Filed 11-20-02; 8:45 am]

**BILLING CODE 6325-38-M**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### 7 CFR Part 652

#### Technical Service Provider Assistance

**AGENCY:** Natural Resources  
Conservation Service, USDA.

**ACTION:** Interim final rule with request  
for comments.

**SUMMARY:** This interim final rule sets forth the Department's process for administering the provision of conservation technical assistance by technical service providers as authorized under section 1242 of the Food Security Act, as amended by the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill). The Secretary of Agriculture has delegated responsibility for administering technical services provided by technical service providers to the Natural Resources Conservation Service (NRCS). NRCS seeks comments from the public on this interim final rule.

**DATES:** *Effective date:* March 1, 2003.  
Comments must be received by  
February 19, 2003.

**ADDRESSES:** Send comments by mail to Melissa Hammond, Technical Service Provider Coordinator, Natural Resources Conservation Service (NRCS), P.O. Box 2890, Washington, DC 20013, or by e-mail to: [melissa.hammond@usda.gov](mailto:melissa.hammond@usda.gov); attn: Technical Service Provider Assistance. This interim final rule may also be accessed via the Internet through the NRCS homepage at <http://www.nrcs.usda.gov> and selecting Farm Bill 2002.

**FOR FURTHER INFORMATION CONTACT:** Melissa Hammond, Technical Service Provider Coordinator, Strategic Natural Resource Issues Staff, NRCS, P.O. Box 2890, Washington, DC 20013-2890, telephone: (202) 720-6731; fax: (202) 720-3052; submit e-mail to:

*gary.gross@usda.gov*, Attention:  
Technical Service Provider Assistance.

#### SUPPLEMENTARY INFORMATION:

##### Background

In 1994, the Department of Agriculture reorganized and transferred increased responsibilities for administration of conservation programs to the Natural Resources Conservation Service (NRCS) to provide technical and financial assistance to producers to improve the natural resource conditions on their land. The Federal Agricultural Improvement and Reform Act of 1996 (the 1996 Farm Bill), Public Law 104-127, created several new conservation programs for which the Secretary of Agriculture delegated administrative responsibility to NRCS.

Through the implementation of its conservation programs, NRCS utilizes its technical expertise to provide producers with information to help them make land management decisions. When a producer applies to participate in a conservation program, NRCS helps the producer evaluate the resource conditions on their land to determine the most appropriate way to meet the producer's conservation objectives. Through its conservation planning process, NRCS helps the producer develop a conservation plan and, depending upon the availability of funds, the Department provides financial assistance to the producer to implement identified conservation practices or systems.

##### The 2002 Farm Bill

The Farm Security and Rural Investment Act of 2002 (the "2002 Farm Bill"), Public Law 107-171, expanded the availability of financial and technical assistance funds for the implementation of conservation programs. At the time of enactment, the Congressional Budget Office estimated that the 2002 Farm Bill represented a \$17 billion increase in the level of funding for conservation programs.

The current staffing levels of NRCS are insufficient to adequately meet the increased need for technical assistance under the conservation programs authorized or re-authorized by the 2002 Farm Bill. Section 2701 of the 2002 Farm Bill amended section 1242 of the Food Security Act of 1985 ("Food Security Act"), as amended, to require the Secretary of Agriculture to provide technical assistance under the Food Security Act conservation programs to a producer eligible for that assistance "directly \* \* \* or at the option of the producer, through a payment \* \* \* to the producer for an approved third party, if available." The Secretary of

Agriculture delegated authority to implement section 1242 to NRCS.

Section 1242 of the Food Security Act greatly expands the availability of technical assistance to producers by encouraging other potential providers of technical assistance to assist in the delivery of technical services. To ensure that high quality technical services are available to all producers, section 1242 requires the Secretary of Agriculture to establish, by regulation, a system for "approving individuals and entities to provide technical assistance to carry out programs under the (Farm Bill) \* \* \* and establishing the amounts and methods for payments for that assistance."

This interim final rule establishes a certification process under which NRCS may evaluate and approve individuals, entities, and public agencies as eligible to provide conservation technical services for certain conservation programs. The interim final rule establishes the criteria by which NRCS will evaluate all potential providers of technical assistance. NRCS will only make payment to a producer for technical services obtained from a technical service provider that has been certified by NRCS to provide such assistance.

The interim final rule distinguishes between certification of an individual working under his or her own auspices and that of an organization, such as a corporation or a public agency, which has individuals working on its behalf. Certification of an individual means the individual has the requisite education and technical expertise to perform the technical services. Certification of an entity or public agency means that the organization may receive payment for the services provided by individuals working under its auspices, but the work must be performed or warranted by certified individuals and the organization must assume the liability for the quality of work performed.

The interim final rule also sets forth conditions and procedures by which NRCS may determine that a certified technical service provider has failed to provide producers high quality technical services and thus, should not remain certified as a provider of technical assistance for conservation programs under Title XII of the Food Security Act.

While section 1242 increases a producer's available sources of technical assistance, it also maintains the options available to NRCS to acquire assistance in meeting its own responsibilities under Title XII. In particular, section 1242(b)(4) of the Food Security Act provides that the Secretary may request

the services of, and enter into cooperative agreements or contracts with, non-Federal entities to assist in providing technical assistance necessary to develop and implement Title XII conservation programs. NRCS may utilize its inherent contracting authority or the authority under section 714 of the Agricultural Appropriations Act for FY 2001, Public Law 106-387, 7 U.S.C. 6962a, to obtain technical services. NRCS may also enter into a cooperative agreement with a technical service provider or other cooperator to stimulate the availability of technical assistance. NRCS will only utilize technical assistance from technical service providers that have been certified under the provisions of this interim final rule.

NRCS has determined that producers will need the delivery of high quality technical assistance immediately. Therefore, NRCS believes that the provisions of this rule are appropriately promulgated as an interim final rule.

##### Summary of Provisions

Through this rulemaking process, the Department seeks to establish processes that provide efficient and effective technical services to producers participating in USDA conservation programs in a manner that optimizes conservation benefits. In particular, the Department aims to provide a performance-based system where producers can take full advantage of the marketplace and obtain cost-effective delivery of quality technical services.

The regulations promulgated by this interim final rule are divided into three subparts. Subpart A sets forth the general provisions related to the delivery of technical services. Subpart B sets forth the certification criteria and process NRCS will utilize to evaluate a technical service provider to determine whether such provider is eligible to provide technical assistance under Title XII. Subpart C sets forth the process and causes under which a technical service provider may become decertified and, therefore, ineligible to provide technical services.

##### Subpart A—General Provisions

Subpart A describes how program participants choose technical service providers, and how program participants may receive payment from the Department for those services. Specifically, the Department will reimburse a program participant if they select a technical service provider from the approved list of technical service providers and the technical services provided meet all legal and program requirements. The Department may also

pay the technical service provider directly if the program participant submits an assignment of payment form.

Subpart A also describes how the Department will expand its delivery of technical services to program participants. Though not in the rule, the Department intends to establish in policy that it will not hire additional Federal employees above its baseline staffing levels unless it has first sought to meet the additional demand for technical services from non-Federal sources through contracts, contribution agreements, and cooperative agreements.

The Department must follow existing procurement and financial assistance laws when it enters into transactions to expand the availability of technical services. The types of transactions are described in greater detail in the preamble discussion under § 652.6.

Additionally, the Department and any technical service provider it hires must abide by Federal disclosure and privacy laws, including the Freedom of Information Act and the Privacy Act. However, the technical service providers hired directly by program participants are not subject to these legal requirements. Therefore, the Department encourages program participants to ensure that their contracts with their technical service providers provide for the appropriate confidentiality of personal information.

Subpart A also addresses the quality assurance measures that the Department will utilize to maintain high quality technical service delivery. The Department may decertify technical service providers based on information obtained through the quality assurance process.

*Section 652.1, Definitions*, sets forth the definitions for the terms used throughout the regulation.

*Section 652.2, Applicability*, sets forth the purpose and scope of the regulations for technical services. The purpose of the regulations is to establish a system for expanding the delivery of technical services available to producers under the Food Security Act.

*Section 652.3, Administration*, describes the basic responsibilities NRCS has in the management of the technical service delivery process, including certification, decertification, recertification, and certification renewal. NRCS will establish the processes and procedures for certification of technical service providers and will assess the availability and utilization of such providers. NRCS wants to ensure that technical service providers are available to producers. NRCS encourages all

sources of technical service providers to participate in the delivery of conservation programs. In its management of the technical service delivery process, NRCS will track payments for the technical service provided by technical service providers. NRCS will also track conservation accomplishments based on information reported to NRCS by technical service providers pursuant to § 652.4(g).

Historical relationships and agreements between USDA and conservation partners will need to be evaluated, and modified as needed, to avoid conflicts of interest, or the appearance thereof, as those partners engage in providing technical services as technical service providers in accordance with this rule.

*Section 652.4, Technical service standards*, sets forth the technical service standards that all technical service providers must meet in order to receive payment from the Department for the technical services provided. In particular, all technical services provided by technical service providers must meet applicable NRCS standards and specifications. The regulations identify several of those standards but are not exhaustive. NRCS National standards, and State standards and specifications, may be found through links at the Web site <http://www.nrcs.usda.gov>. NRCS establishes this minimum standard for technical services to ensure uniformity among the various sources of technical service providers, conformity with NRCS conservation program requirements, and dependability of the quality of service that producers will receive.

NRCS has historically encouraged the development and utilization of new and innovative conservation practices through adoption of such practices when proven effective, for example, practices related to air quality. In particular, the Environmental Quality Incentives Program provides for the utilization of such new and innovative conservation practices. However, until NRCS has evaluated the effectiveness of such practices, it will not provide payment for the technical services needed to plan and implement new practices. Therefore, the interim final rule requires that a technical service provider seek NRCS approval prior to initiating technical services for a new or innovative technology or practice.

To assist NRCS with its quality assurance process set forth in § 652.7, NRCS incorporated in § 652.4 several requirements of technical service providers. In particular, NRCS requires that the technical service provider sign a written certification that the technical

services provided for a particular practice or plan complies with all program requirements, legal requirements, and NRCS standards and specifications, and is consistent with the conservation goals and programs under which the assistance is given. This requirement makes it clear that a technical service provider is responsible for the quality of the assistance provided to either the producer or the Department.

NRCS requires a technical service provider to assume all legal responsibility for the quality of the work provided. Thus, if a producer implements a deficient conservation plan developed by a technical service provider and implementation of the plan results in harm or injury, the technical service provider, not the producer, is liable. This provision protects a producer from liability that was not caused through any fault of the producer. The producer is responsible in all cases for complying with the terms and conditions of the program contract or agreement, which includes meeting USDA technical standards and specifications.

Language is also included in the regulations regarding incorporation of low-cost alternatives, where appropriate, to address the resource issues and meet the objectives of both the program and program participant.

Finally, this section provides that NRCS is not contractually bound to the program participant to provide reimbursement for technical services or practice implementation that is not consistent with NRCS standards and specifications. Where NRCS does not provide the technical assistance for the development of a conservation plan incorporated into its program agreements, NRCS reserves the right to ensure that a program agreement is implemented in accordance with program requirements, including requiring that practices meet NRCS standards and specifications. This provision allows NRCS to continue to meet the conservation program goals and objectives for which it has the delegated responsibility.

This section also requires technical service providers to input data into the NRCS conservation accomplishments tracking system. NRCS will utilize this information as part of its quality assurance process under § 652.7.

*Section 652.5, Program participant acquisition of technical services*, describes how program participants may obtain technical services from sources other than the Department and receive reimbursement for those technical services. This section describes that a

program participant may obtain technical services from the Department or any individual, entity, or public agency certified by NRCS under this interim final rule to provide technical services.

If a producer wishes the Department to provide technical services, he or she should contact NRCS at the local USDA Service Center. If the producer wishes to utilize a different source of technical service, he or she should obtain information from the Department about program requirements and payment terms. To ensure necessary funds are available to reimburse the program participant, the Department and the program participant must incorporate and obligate under the program contract or agreement the estimated amount of funds needed.

A producer must choose a certified technical service provider from the appropriate NRCS approved list of technical service providers in order to obtain reimbursement for the costs associated with those services. The list of approved technical service providers for the particular category of technical services will be available through the NRCS home page on the Internet, or can be obtained from the local USDA service center. In order to receive reimbursement, once the technical services have been provided and meet program requirements, the program participant would submit to NRCS or FSA, as appropriate, an invoice, any supporting documentation, and a request for payment.

In many situations, a program participant needs to obtain technical services prior to entering into a program contract or agreement with either NRCS or the Farm Service Agency. NRCS or the Farm Service Agency (collectively referred to as the Department) may reimburse a participant for pre-program contract or agreement technical services obtained to complete program related activities prior to entering a program contract or agreement and develop a conservation plan. The participant must provide to either NRCS or the Farm Service Agency an invoice and documentation of the technical services provided by a certified technical service provider in order to be reimbursed for these costs.

The terms and conditions of a program contract or agreement will provide for the reimbursement of the producer for technical services provided by a certified technical service provider. The Department is interested in developing a dynamic approach to its payment rates schedule in order to ensure that its payment rates do not lag behind the development of

technological efficiencies that decrease the time and price associated with the delivery of technical services.

The Department's goal in developing a method of setting payment rates is to obtain the most competitive payment rates while ensuring that program participants have access to the widest available range of qualified technical service providers. The Department is seeking comments on how to design rate payments that are transparent, easy to implement, and ensure competition in program participant acquisition of technical services. The Department intends to publish an amendment to this interim final rule within the next 30 days that will explain in detail the payment rate process. The Department is seeking comments on how to design a rate setting process that would be easy to implement yet sensitive to regional or local pricing variation.

The Department is considering whether to establish payment rates by conducting a State by State solicitation of technical service prices from individuals, private-sector entities, and public agencies in order to ascertain the current market prices for delivering technical services. If chosen, the Department would utilize an existing Internet based notice posting system to solicit from technical service provider sources their respective price data for particular technical services. This process would involve electronically uploading a Departmental "Sources Sought Notice" to the posting system, requesting potential technical service providers to submit a listing of service prices, and consolidating the price data from all respondents. The Department would analyze the information submitted pursuant to its solicitation as part of its process for determining payment rates. After the first year of operation, the Department would adjust the rates each year thereafter, or more frequently if needed, using current market data it obtained from technical service providers, an updated solicitation to all sources, or a combination thereof.

In using the information obtained from this solicitation, the Department could set a "not-to-exceed" rate. To ensure healthy competition within the market, this rate could not be set so low as to discourage all participation by viable technical service providers nor could it be set so high as to result in wasteful federal expenditures. To encourage competition, the Department is also considering options that would create incentives for producers to choose the most efficient provider of technical services in the market place, such incentives could include providing

a cost savings to program participants that choose a technical service provider with a price below a "not-to-exceed" rate.

The Department is also considering basing technical service payments upon a flat rate. Under this option, the Department would pay a flat rate for each project. Thus, if a project costs \$20,000 to install, the program participant would be reimbursed \$4000, or 20% of the project cost, for the technical services obtained from a technical service provider. However, this approach may not adequately reflect the actual price for technical services on any particular project and might adversely affect obtaining technical services for projects that are small or more complex in scope because the actual price for the design could exceed the flat rate.

In addition, the Department is also considering basing technical service payment rates based on its own costs to deliver the technical services. Under this option, the Department would estimate the technical service rates and establish not-to-exceed rates for use in program contracts or agreements. These rates would not exceed the Federal Government rates to deliver the same service. The Department is interested in obtaining public comment on these or other feasible methods for establishing payment rates that will provide the greatest opportunity for the market place to inform the price of technical services while providing maximum flexibility to program participants to choose a technical service provider.

Section 652.6, Department delivery of technical services, describes the types of legal instruments the Department may enter into to deliver technical services to producers. The Department will provide technical services directly to a producer when chosen by the producer to provide those services. When Department baseline staffing levels do not meet the demand for its technical services, the Department may procure additional technical services through a procurement contract or a cooperative agreement entered into under the authority of section 714 of the Agricultural Appropriations Act of 2001 (the 2001 Act), Public Law 106-387, 7 U.S.C. 6962a. As mentioned above, the Department intends to adopt by policy that it will seek to meet the additional demand for technical services from non-Federal sources. To avoid confusion, "non-assistance" cooperative agreements under section 714 are identified as "contribution agreements" to distinguish them from cooperative agreements as defined by the Federal Grant and Cooperative Agreement Act

(FGCAA), 31 U.S.C. 6301 *et seq.* The Department may also meet the additional demand for technical services by stimulating the availability of additional technical services through a cooperative agreement as defined by the FGCAA.

NRCS utilizes contribution agreements for obtaining technical services and receives from a contributing party financial and in-kind donation of goods, services, and personal services. NRCS ensures Federal funds are wisely spent by requiring that the level of contribution by the other party justify the non-competitive nature of the transaction. For transactions where NRCS seeks to obtain technical services for a particular project or for more widespread programmatic needs, NRCS will only enter into a contribution agreement with a certified technical service provider where such a provider donates at least 50% of the technical services needed.

Contribution agreements that do not include the provision of technical services are outside of the scope of this rule, and NRCS will evaluate the merit of entering into each such agreement based upon the particular nature of the project and the level of contribution by the other party.

For transactions where the Department seeks to stimulate the expansion of the level of technical services provided to producers, the Department may enter into a cooperative agreement that is governed by the FGCAA and its implementing regulations and circulars.

The Department reaffirms its commitment to competitive cooperative agreements by referencing in § 652.6 the competition requirements in 7 CFR part 3015. Section 652.6(b) identifies that the Chief of the NRCS or his designee, or the Administrator of FSA as appropriate, are authorized to determine that an exception to the competition requirements are in the best interest of the Government and needed to fulfill the objectives of the program.

The Department anticipates that most technical service providers will be selected and hired directly by the program participant and paid under the terms of the program contract or agreement entered into between the program participant and the Department. However, because of the anticipated increase in workload that the 2002 Farm Bill creates, the Department may need to procure services from technical service providers in meeting its own responsibilities to deliver conservation program technical assistance.

Department policy encourages the expansion of technical services provided by all sources, especially private and commercial sources. Wherever appropriate and in the best interest of the Government, the Department will utilize the procurement process to obtain any additional technical services necessary to implement the conservation programs. The interim final rule, in § 652.6(b) indicates that the Chief or the Administrator of FSA may limit the utilization of cooperative agreements and contribution agreements in obtaining or stimulating technical services in order to ensure openness and competitiveness in the process.

Section 652.6(c) addresses an NRCS concern about the possibility of unfair competitive advantage by the individuals, private-sector entities, and public agencies with which NRCS may enter into a contract or agreement. NRCS believes that a technical service provider hired directly by NRCS to assist the agency with its responsibilities could have an unfair competitive advantage over other technical service providers when being selected by program participants. For example, individuals and organizations hired by NRCS may have superior knowledge regarding the technical service needs of particular producers that would give them a competitive advantage over other providers. In addition, NRCS is concerned that a technical service provider may receive payment twice for performing the same work, once through the contract or agreement with the Department and a second time through the producer's program contract or agreement.

Therefore, NRCS requires in the interim final rule that a technical service provider hired by NRCS to provide technical services to a particular program participant is ineligible to receive a payment under a program contract or agreement for that same program participant.

*Section 652.7, Quality assurance*, provides that NRCS will evaluate the quality of the technical services provided by certified technical service providers. This section provides for a process through which NRCS will evaluate technical services performed by technical service providers. NRCS requires under § 652.4(g) that technical service providers make available certain information that can be utilized in its quality assurance process. While this information may be utilized to decertify a technical service provider, the purpose is to discover deficiencies in the technical service delivery and allow the technical service provider to take

remedial action before such decertification action becomes necessary.

#### **Subpart B—Certification**

This subpart contains technical service provider criteria for certification requirements; processes to certify individuals, private-sector entities, and public agencies; requirements for recommending organizations; and the process and requirements for certification renewal.

In order to meet the requirements of 16 U.S.C. 3842(b)(3) regarding "Interim Assistance," NRCS will consider entities and individuals who are currently providing technical services through the Department under a contract, cooperative agreement, or contribution agreement as "conditionally certified" to ensure the continued availability of technical services from these providers for a transitional period before this regulation is effective and implemented. The terms of this conditional certification are: (1) The individual or entity must be operating under a contract, cooperative agreement, or contribution agreement that is in effect on the date of publication of this rule; (2) the individual or entity must submit an Application for Certification by March 1, 2003; and (3) the conditional certification expires by either the date a Certification Agreement is entered or September 30, 2003, whichever is earlier. These terms will allow entities and individuals to continue to provide technical services under their respective contracts, cooperative agreements, or contribution agreements during FY 2003 until NRCS is able to evaluate such individuals and organizations under the certification process set forth in this part. Section 652.21(f) of this rule sets forth these terms and conditions for conditional certification of individuals, private-sector entities, and public agencies providing technical services under current contracts, cooperative agreements, or contribution agreements.

Additionally, NRCS will also consider individuals that are certified under NRCS policies in place prior to the publication of this interim final rule as conditionally certified. The terms of this conditional certification are: (1) The individual or entity must have been certified under such policies prior to the publication of this interim final rule; (2) the individual or entity must submit an Application for Certification by March 1, 2003; and (3) the conditional certification expires either by the date a Certification Agreement is entered or September 30, 2003, whichever is earlier. Section 652.21(g) of this rule

sets forth these terms and conditions for conditional certification of individuals who were certified under pre-existing NRCS policy.

NRCS believes that the availability of training is essential to the successful implementation of the certification process. NRCS anticipates that a substantial amount of training will be needed for applicants to become certified as technical service providers. The specific training needed will vary from State-to-State depending on the type and quantity of technical services needed to address the additional Title XII Farm Bill workload in each State, the overall interest by applicants to become technical service providers, and the private and public sector mix in providing technical services.

NRCS encourages the development and presentation of training opportunities from a wide variety of sources. NRCS anticipates that universities, colleges, land grant institutions, the Extension Service, private entities, and other sources may be used by the Department to develop and provide the training. NRCS is particularly interested in comments from the public regarding all aspects of technical service provider training.

Individuals interested in becoming certified are responsible for obtaining the training they need to become certified as technical service providers, for keeping their own training records current, and for providing documentation for certification purposes on the training they have received. Costs associated with becoming a technical service provider, as well as maintaining or renewing certification, are the responsibility of the individual seeking certification.

NRCS will publish on its home web page by December 31, 2002, further instructions, guidance, forms, and the process related to the submittal of applications for certification. NRCS will begin to accept applications and recommendations for certification on January 2, 2003, and will review these submittals as they are received. While NRCS may enter into Certification Agreements with technical service providers prior to March 1, 2003, such certifications will not be effective until the effective date of this interim final rule.

NRCS is seeking comments and ideas for streamlining the certification process to make it as efficient and effective as possible. NRCS is also seeking input regarding methods to minimize the burden of certification for applicants seeking certification for more than one state. Of particular interest is how variation in State laws and requirements

should be addressed within a certification system.

*Section 652.21*, Certification criteria and requirements, sets forth the certification criteria and other requirements for certification of individuals. All individuals must meet the NRCS certification criteria and requirements in order to be certified by the agency to provide technical services to program participants and the Department. NRCS requires that all certified individuals have the necessary training, experience, and knowledge to perform the technical services for which certification is sought. Because the technical services are performed to assist producers to participate in Department conservation programs, the certified individual must have working familiarity with Department standards, specifications, and program requirements. These requirements are set forth in Department manuals, handbooks, and other references that are available on the web at <http://www.nrcs.usda.gov> to the technical service provider.

In conjunction with the certification, NRCS will enter into a Certification Agreement with the applicant. The Certification Agreement documents the terms and conditions of the certification. Technical service providers are certified for a three-year time period and may have their certification renewed for subsequent time periods. The interim final rule also provides that NRCS will establish and collect fees related to the certification of technical service providers. NRCS will make available to the public any fee schedule established under this provision.

*Section 652.22*, Certification process for individuals, sets forth the certification process for individuals to become certified. In order to be considered for certification, individuals must: submit an Application for Certification to NRCS, be recommended for certification by a recommending organization as provided by § 652.25, or be included as part of the certification application submitted by a private-sector entity or public agency. Whatever avenue is chosen by the individual, NRCS will determine within 60 days of receipt of an application if the applicant meets the requirements for certification and will enter into a Certification Agreement with the applicant at the time of certification. After execution of a Certification Agreement, NRCS then place the individual's name on the approved list of technical service providers for that State. The list will be available on the Department's Web site. A payment will not be made for

technical services provided by the individual under this part until the individual is certified and placed on the approved list.

The Application for Certification and the Certification Agreement will be available on the National and State NRCS Web sites in a PDF format for easy accessibility and use.

*Section 652.23*, Certification process for private-sector entities, sets forth the certification process for private-sector entities. Certification of an entity means that the entity may receive payment for the services provided by individuals working under its auspices, but the work must be warranted first by a certified individual within the entity, and the organization must assume the liability for the quality of work performed.

Thus, a private-sector entity may be approved to provide technical services and receive payment for those services as long as the entity has at least one certified individual acting on its behalf. In addition, the entity must identify an official of the entity that is authorized to receive official correspondence related to the status of the entity's certification. The interim final rule provides that an individual(s) may seek certification as part of the application package of the private-sector entity.

All individuals warranting technical services on behalf of the entity must be individually certified and identified on the entity's Application and Certification Agreement. Non-certified individuals may provide input to the technical services provided by the entity, but the work products developed by these individuals must be adopted and warranted by one of the certified individuals identified on the entity's Application and Certification Agreement. Thus, if a non-certified engineer drafts an engineering drawing, the engineer who is certified to provide such engineering services must sign the final drawing and warrant that it meets the requirements set forth in § 652.4. Individuals working under the private-sector's auspices must act within the terms and conditions of a signed Certification Agreement between NRCS and the entity.

NRCS may decertify the entire entity or any individual or individuals working under the auspices of such entity in accordance with the provisions of Subpart C.

*Section 652.24*, Certification process for public agencies, sets forth the certification process for public agencies. Public agencies possess through their employees certain expertise and skills to carry out their mission that may match the expertise and skills needed to

provide technical services to program participants and the Department.

The interim final rule distinguishes between certification of a public agency under this section and certification of an individual working under the individual's own auspices. Certification of a public agency means that the agency may receive payment for the services provided by individuals working under its auspices, but the work must first be warranted by a certified individual within the agency, and the public agency must assume liability for the quality of the work provided.

Thus, a public agency may be approved to provide technical services and receive payments for those services as long as the agency has at least one certified individual acting on its behalf. In addition, the agency itself must identify an official that is authorized to receive official correspondence related to the status of the agency's certification. The interim final rule provides that an individual may seek certification as part of the application package of the public agency.

Employees of the public agency that warrant technical services on behalf of the agency must be individually certified and identified by the public agency as those employees authorized to perform the technical services in the Application and Certification Agreement. Just as described for private-sector entities, a non-certified employee of a public agency may provide input into the technical services provided by the public agency, but the work products developed by these individuals must be adopted and warranted by one of the certified individuals identified on the agency's Application and Certification Agreement. These individuals must operate within the terms and conditions of a signed Certification Agreement between the agency and NRCS.

NRCS believes that there exists a potential appearance of impropriety where public officials provide similar duties in both their official public and private capacities. NRCS is concerned that program participants may be confused about the capacity under which a certified individual that works for a public agency is providing services to them. Public employees are held to a higher standard of conduct when providing assistance than private sector individuals and entities providing a similar service to a customer. For example, public agencies have certain disclosure and confidentiality requirements regarding information they obtain from producers that do not apply

to private sector individuals and entities.

While nearly all public agencies already have restrictions regarding outside employment of its employees, the Department requires, as part of the public agency's certification that its employees may not provide technical services as an individual or as a member of a public-sector entity outside of the auspices of that agency.

*Section 652.25*, Alternative application process for individual certification, provides for an alternative to the process set forth in § 652.22 for individuals to be considered for certification by NRCS. In lieu of submitting an Application for Certification directly to NRCS pursuant to § 652.22, individuals may be considered for certification through the recommendation of an organization ("recommending organization") with which NRCS has a memorandum of understanding or other appropriate agreement providing for such recommendation. A recommending organization is a professional organization, association, licensing board or other entity that NRCS has determined has an accreditation program to train, test, and evaluate individuals for competency in a particular area or areas of technical service delivery and whose accreditation program meets the certification criteria set forth in § 652.25.

NRCS's use of, or partnership with, recommending organizations is intended to streamline the certification process to the greatest extent possible by eliminating the need for each individual to submit an Application for Certification and by recognizing the specific accreditation expertise of various organizations.

Prior to entering into an agreement with a recommending organization, NRCS determines whether the organization's accreditation program meets NRCS standards and specifications for the particular technical services to be provided. As set forth in § 652.25(b), the agreement between NRCS and a recommending organization contains specific requirements related to how the organization recommends individuals to NRCS for certification.

NRCS makes the final determination whether to certify for each individual recommended by an organization. The authority of the agency to certify is non-delegable and is made by the appropriate NRCS official based upon his or her assessment of whether an applicant meets the criteria as set forth in this part. NRCS may terminate an

agreement with a recommending organization if NRCS determines that the organization has violated any of the terms of the agreement or if any other problems arise in the organization's certification recommendations. In considering whether to terminate any agreement with a recommending organization, the agency's duty to ensure that only qualified individuals are certified to be technical service providers is paramount.

*Section 652.26*, Certification renewal, sets forth the process and requirements for certification renewal for individuals, private-sector entities, and public agencies. NRCS believes that technical service provider certifications should have a finite time limit in order to ensure that the certification requirements are still being met and to reaffirm the terms and conditions of the current Certification Agreement. Accordingly, all technical service providers must renew their certification every three years. Technical service providers decertified in accordance with the provisions in Subpart C, who are seeking to become re-certified after the period of decertification has expired, must reapply for certification through the regular application process.

NRCS is providing a streamlined process for certification renewal in the interim rule. A standard renewal form, Certification Renewal, will be available on the National and State NRCS Web sites in a PDF format. The technical service provider must complete and submit their request for Certification Renewal to NRCS at least 60 days prior to the current certification expiration date. All renewals are in effect for three years and may be subsequently renewed for three-year periods.

### **Subpart C—Decertification**

In order to protect the public interest and to ensure the adequate provision of technical assistance under its conservation programs, the Department's policy is to certify and maintain certification of only those individuals who meet the criteria set forth in this rule and who act responsibly in the provision of technical assistance. The decertification process set forth in subpart C is the means by which the Department carries out this policy. The Department is promulgating these regulations to provide for a decertification process because neither the National Appeals Division nor Government-wide Suspension and Debarment regulations apply to the decertification of technical service providers. Specifically, the National Appeal Division's regulations apply to appeals related to program participants

as that term is defined by 7 CFR 11.1. Technical service providers are not "program participants." The decertification process described herein is more akin to the Government-wide Debarment and Suspension (Nonprocurement) regulations at 7 CFR part 3017, which are specifically excluded from the definition of program participant in 7 CFR 11.1. However, the Government-wide Suspension and Debarment regulations at 7 CFR 3017.110(a)(3)(iii) exclude conservation programs from applicability.

The dual goals of the decertification process are: (1) To establish an efficient administrative process by which technical service providers who fail to meet NRCS standards and specifications in the provision of technical service or otherwise fail to meet the terms of the Certification Agreement, i.e., act responsibly, are decertified from providing technical services to the Department and to program participants, and (2) to ensure adequate due process to the technical service providers who are proposed for decertification. The purpose of the decertification process is to protect the public interest by removing those technical service providers from the approved list who fail to act responsibly.

*Section 652.31, Policy*, sets forth general guidelines regarding the causes for decertification. It is not the Department's intent to decertify an otherwise responsible technical service provider for minor inconsistencies with NRCS standards and specifications if those failures are infrequent events, and the technical service provider works in good faith to remedy any problems. The Department encourages technical service providers to act proactively in remedying any technical services that fail to meet NRCS standards and specifications. To the extent it is able, NRCS will work with those technical service providers who ask for assistance in addressing deficiencies in their provision of technical service. The Department will decertify those technical service providers who demonstrate a failure to act responsibly in the provision of technical service.

Accordingly, *§ 652.32, Causes of decertification*, sets forth the causes for decertification. These causes include failures in the provision of technical service to the extent that the practice is ineffective or environmentally harmful and/or other violations of the terms of the Certification Agreement. In addition, a catch-all provision is included under this section to cover any other cause of a serious or compelling nature demonstrating a technical service

provider's failure to fulfill the terms of their Certification Agreement.

*Section 652.33, Notice of proposed decertification*, provides that the State Conservationist will send to any technical service provider proposed for decertification a Notice of Proposed Decertification. This section also sets forth the required content of the Notice of Proposed Decertification. In addition, this section provides that the Notice will identify the certified individuals who work under the auspices of a technical service provider (such as a public agency or private-sector organization), who are also being considered for decertification. Certified individuals have a separate right of appeal. In order to appeal, certified individuals must follow the process and deadlines set forth in this subpart.

*Section 652.34, Opportunity to contest decertification*, sets forth the process, including the deadlines, for a technical service provider to contest any Notice of Proposed Decertification.

*Section 652.35, State Conservationist decision*, provides the time lines for the State Conservationist's decision regarding whether to decertify, the basis for the decision, and the required notices to the technical service provider of the State Conservationist's decision.

*Section 652.36, Appeals of decertification decisions*, provides for appeal by the technical service provider of a State Conservationist's decision to the Chief, deadlines for appeal, issuance of the final decision, and the contents of the Chief's final decision. Section 652.36 also provides that the Chief may delegate his duties as the decertifying officer to an NRCS employee in the National Office.

*Section 652.37, Period of decertification*, provides general guidelines for the decertifying official's (the State Conservationist or Chief, as appropriate) determination regarding the period of decertification. These guidelines are meant to be flexible while at the same time providing technical service providers with a general idea of how the period of decertification is decided upon. As is true of the entire decertification process, determination of the length of the decertification period is intended to protect the public interest by removing from the list of approved providers those technical service providers who fail to act responsibly in the provision of technical service. The length of the decertification period is commensurate with the degree to which the technical service provider has violated the terms of the Certification Agreement, including meeting NRCS standards and specifications. It is within the decertifying official's discretion to

decide the period of decertification based upon the general guidelines, the facts of the particular case, and any mitigating factors.

*Section 652.38, Scope of decertification*, provides guidance on the scope of a decertification. Decertification applies to an entire entity and all organizational elements thereunder of a technical service provider, whether the provider is a private sector entity or a public agency. The decertifying official must determine, based upon the facts of a situation, whether to decertify the entire organization (including the individuals identified as authorized to provide technical services under the auspices of such organization); the organization only; a particular individual or individuals acting under the auspices of that organization; and/or an organizational element of the public agency or private sector entity. For example, the decertifying official may decertify the private sector entity or public agency and a particular individual or individuals, but not all the individuals identified in the Certification Agreement, if the decertifying official finds that the actions of the entity or public agency and/or particular authorized individuals cannot be imputed to all the individuals identified as authorized to provide technical services under the auspices of the organization. The intent of this subpart is to decertify only those organizations or elements thereof and employees that are deficient in the provision of technical services. In making this determination, the decertifying official will also consider the terms of the Certification Agreement itself, which require the public agency and private sector to be responsible for the actions of their employees and/or agents.

As set forth in *§ 652.39, Mitigating factors*, the decertifying official takes into consideration any mitigating factors presented by the technical service provider when deciding whether to decertify as well as the scope and the period of decertification. Even though mitigating factors may be presented by a technical service provider, the decertifying official may still decide to decertify. This section provides general examples of mitigating factors. For example, subsection (c) provides as a mitigating factor actions a technical service provider takes to prevent future deficiencies in the provision of technical services which led to the Notice of Proposed Decertification, including deficiencies in the provision of technical service or in otherwise complying with the terms of the

Certification Agreement. Technical service providers are encouraged to mitigate any deficiencies in the provision of technical services.

*Section 652.40*, Effect of decertification, sets forth the effect of a decertification determination. During the time period of decertification, NRCS will not procure or cooperate with a decertified technical service provider nor will the Department reimburse a program participant for the services of a decertified provider. Current or on-going procurements, cooperative agreements or program agreements will not be affected retroactively by the listing of a technical service provider as decertified.

In addition, § 652.40 provides that the agency shall maintain a list of decertified technical service providers. When a technical service provider is decertified in one State, the effect is to decertify that provider in all States. NRCS will work diligently to keep the list current. The list will be available to the public through NRCS's Web site and at USDA Service Centers. It is the program participant's responsibility to check the list prior to securing a technical service provider's services. Further, the rule requires that no program participant may knowingly hire a decertified technical service provider.

*Section 652.41*, Effect of filing deadlines, provides that the failure of a technical service provider to meet filing deadlines results in the forfeiture of appeal rights and also clarifies the deadline for contest and appeal filings. These policies assist in the efficient and fair administration of the decertification process.

Finally, *section 652.42*, Recertification, states the agency's recertification policy for those technical service providers who have been decertified.

### Regulatory Certifications

#### *Executive Order 12866*

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this interim final rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB). Pursuant to section 6(a)(3) of Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this rulemaking, and included the analysis as part of a Regulatory Impact Analysis document prepared for this interim final rule. The analysis estimates that the technical service provider process will have a beneficial impact on the Nation's natural resources by accelerating

adoption of conservation practices, increasing environmental and resource benefits, maintaining and enhancing long-term productivity of the resource base, reducing non-point source pollution damage, reducing farming costs, and contributing to an increase in net farm income. A copy of this analysis is available upon request from Gary Gross, Resource Conservationist, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890, or by e-mail to [gary.gross@usda.gov](mailto:gary.gross@usda.gov); attn: Technical Service Provider Assistance—Economic Analysis, or at the following Web address: <http://www.nrcs.usda.gov>.

#### *Executive Order 12988*

This interim final rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim final rule are not retroactive. The USDA has not identified any State or local laws that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such conflict is identified, the provisions of this interim final rule preempt State and local laws to the extent such laws are inconsistent with this rule.

### Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(c) of the Regulatory Flexibility Act, it has been determined that this rule will not have a significant impact on a substantial number of small entities as defined by the Act. This rule sets forth the process by which entities could, on a voluntary basis, become certified providers. Therefore, a regulatory flexibility analysis is not required for this interim final rule. This interim final rule sets forth the policies and procedures for the provision of technical service provider assistance, which involves the voluntary participation of technical service providers.

### National Environmental Policy Act

The regulations promulgated by this rule do not authorize any action that may negatively affect the human environment. Accordingly, an analysis of impacts under the National Environmental Policy Act has not been performed. The technical service provider process will help implement new and existing USDA conservation programs which are subject to the environmental analyses pursuant to the National Environmental Policy Act.

### Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the promulgation of regulations and

the administration of Title II of said act be carried out without regard to the chapter 35 of title 44 of the United States Code (commonly known as the Paperwork Reduction Act). Accordingly, these regulations and the forms, and other information collection activities need to administer technical service provider assistance under these regulations, are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and NRCS in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in technical services delivery under this rule are not fully implemented for the public to conduct business with NRCS electronically. However, the required standard forms discussed in this rule will be available electronically through the USDA eForms Web site at [www.sc.egov.usda.gov](http://www.sc.egov.usda.gov) for downloading. The regulation will be available at the NRCS homepage at [www.nrcs.usda.gov](http://www.nrcs.usda.gov). Applications may be submitted as provided for in this rule. At this time, electronic submission is not available. However, NRCS is currently working on fully implementing electronic submission so that it is available in the future.

### Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, NRCS assessed the effects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local, or Tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

### Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Department of Agriculture Reorganization Act of 1994, Public Law 104-354, USDA classified this interim final rule as not major.

**Civil Rights Impact Analysis**

A Civil Rights Impact Analysis has been completed regarding this rule. The review reveals no factors indicating any disproportionate adverse civil rights impacts for participants in NRCS programs and services who are minorities, women, or persons with disabilities. A copy of this analysis is available upon request from Gary Gross, Resource Conservationist, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013-2890, or by e-mail to [gary.gross@usda.gov](mailto:gary.gross@usda.gov); attn: Technical Service Provider Assistance—Civil Rights Impact Analysis, or at the following web address: <http://www.nrcs.usda.gov>.

**List of Subjects in 7 CFR Part 652**

Natural Resources Conservation Service, Soil conservation, Technical assistance, Water resources.

For the reasons stated in the preamble, the Natural Resources Conservation Service hereby amends Title 7 of the Code of Federal Regulations as set forth below:

Accordingly, Title 7 of the code of Federal Regulations is amended by adding a new part 652 to read as follows:

**PART 652—TECHNICAL SERVICE PROVIDER ASSISTANCE****Subpart A—General Provisions**

- Sec.
- 652.1 Definitions.
  - 652.2 Applicability.
  - 652.3 Administration.
  - 652.4 Technical service standards.
  - 652.5 Program participant acquisition of technical services.
  - 652.6 Department delivery of technical services.
  - 652.7 Quality assurance

**Subpart B—Certification**

- 652.21 Certification criteria and requirements.
- 652.22 Certification process for individuals.
- 652.23 Certification process for private-sector entities.
- 652.24 Certification process for public agencies.
- 652.25 Alternative application process for individual certification.
- 652.26 Certification renewal.

**Subpart C—Decertification**

- 652.31 Policy.
- 652.32 Causes of decertification.
- 652.33 Notice of proposed decertification.
- 652.34 Opportunity to contest decertification.
- 652.35 State Conservationist decision.
- 652.36 Appeals of decertification decisions.
- 652.37 Period of decertification.
- 652.38 Scope of decertification.
- 652.39 Mitigating factors.
- 652.40 Effect of decertification.

- 652.41 Effect of filing deadlines.
- 652.42 Recertification.

**Authority:** 16 U.S.C. 3842.

**Subpart A—General Provisions****§ 652.1 Definitions.**

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

*Approved list* means the list of individuals, private sector entities, or public agencies certified by the State Conservationist in each State to provide technical services to a program participant or to the Department.

*Chief* means the Chief of NRCS or designee.

*Certification* means the action taken by NRCS to approve:

(1) An individual as meeting the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system; or

(2) An entity or public agency as having an employee or employees that meet the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system.

*Conservation practice* means a specified treatment, such as a structural or vegetative practice, or a land management practice, that is planned and applied according to NRCS standards and specifications.

*Contract* means the same as that term is defined in the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*

*Contribution agreement* means the acquisition of technical services entered into under the authority of 7 U.S.C. 6962a.

*Cooperative agreement* means the same as that term is defined in the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*

*Department* means the Natural Resources Conservation Service, the Farm Service Agency, or any other agency or instrumentality of the United States Department of Agriculture that is assigned responsibility for all or a part of a conservation program subject to this part.

*Entity* means a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, nonprofit organization, a member of a joint venture, or a member of a similar organization.

*Program participant or participant* means a person who is eligible to receive technical or financial assistance under a conservation program covered by this rule.

*Public agency* means a unit or subdivision of Federal, State, local, or Tribal government, other than the Department.

*Recommending organization* means a professional organization, association, licensing board or similar organization with which NRCS has entered into an agreement to recommend qualified individuals for NRCS certification as technical service providers for specific technical services.

*Secretary* means the Secretary of the United States Department of Agriculture.

*State Conservationist* means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

*Technical service* means the technical assistance provided by technical service providers, including conservation planning, and/or the design, layout, and installation of approved conservation practices.

*Technical service provider* means an individual, entity, or public agency certified by the State Conservationist and placed on the approved list to provide technical services to program participants or to the Department.

**§ 652.2 Applicability.**

The regulations in this part set forth the policies, procedures, and requirements related to delivery of technical assistance by individuals and entities other than the Department, hereinafter referred to as technical service providers.

**§ 652.3 Administration.**

(a) As provided in this part, the Department will provide technical assistance to program participants directly, or at the option of the program participant, through a technical service provider in accordance with the requirements of this part.

(b) The Chief, Natural Resources Conservation Service (NRCS) will direct and supervise the administration of the regulations in this part.

(c) NRCS will:

(1) Provide overall leadership and management for the development and administration of a technical service provider process;

(2) Consult with the Farm Service Agency and other appropriate agencies and entities concerning the availability and utilization of technical service providers and the implementation of technical service;

(3) Establish policies, procedures, guidance, and criteria for the certification, recertification, decertification, certification renewal,

and implementation of the use of technical service providers;

(4) Certify, decertify, and recertify technical service providers as well as renew certification for technical service providers.

(5) Encourage development and availability of training opportunities for individuals interested in becoming technical service providers;

(6) Track payment and accomplishment data related to technical services delivery; and

(7) Provide quality assurance for technical services provided by technical service providers.

(d) The Department will not make payments under a program contract or agreement, a contract, contribution agreement, or cooperative agreement for technical services provided by a technical service provider unless the technical service provider is certified by NRCS and is identified on the approved list.

(e) The Department will evaluate the terms and conditions of existing agreements with technical service providers to ensure that they are consistent with this part.

#### **§ 652.4 Technical service standards.**

(a) All technical services provided by technical service providers must meet USDA standards and specifications as set forth in Departmental manuals, handbooks, guides, and other references for soils mapping and natural resources information, conservation planning, conservation practice application, and other areas of technical assistance.

(b) The Department must approve all new technologies and innovative practices, including applicable standards and specifications, prior to a technical service provider initiating technical services for those technologies and practices.

(c) Pursuant to any contract or agreement with NRCS or with the program participant, the technical service provider must warrant in writing that the particular technical service provided:

(1) Complies with all applicable Federal, State, Tribal, and local laws and requirements;

(2) Meets applicable Department standards, specifications, and program requirements;

(3) Is consistent with the particular conservation program goals and objectives for which the program agreement or contract was entered into by the Department and the program participant; and

(4) Incorporates, where appropriate, low-cost alternatives that would address the resource issues and meet the

objectives of both the program and program participants for which assistance is provided.

(d) Technical service providers, including entities and public agencies, must assume all legal responsibility for the technical services provided.

Technical service providers, including entities and public agencies, must indemnify and hold the Department and the program participant harmless for any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts or omissions of the technical service provider in connection with the technical service provided.

(e) The Department will not be in breach of any program contract or agreement if it fails to implement conservation plans or practices or make payment for conservation plans or practices resulting from technical services that do not meet USDA standards and specifications or are not consistent with program requirements.

(f) The program participant is responsible for complying with the terms and conditions of the program contract or agreement, which includes meeting USDA technical standards and specifications for any technical services procured by the participant or obtained in accordance with this part.

(g) The technical service provider shall report in the NRCS conservation accomplishment tracking system the appropriate data elements associated with the technical services provided to the Department or program participant.

#### **§ 652.5 Program participant acquisition of technical services.**

(a) Program participants may obtain technical assistance directly from the Department or from a certified technical service provider.

(b) To acquire technical assistance directly from the Department, program participants should contact their local USDA Service Center.

(c) To acquire technical services from a technical service provider, program participants must:

(1) Comply with the program agreement when acquiring technical services; and

(2) Select a certified technical service provider from the approved list of technical service providers.

(d) To obtain payment for technical services, the program participant must submit to the Department an invoice, supporting documentation, and a request for payment. The Department may pay a program participant for technical services provided by a technical service provider hired by the program participant through:

(1) A reimbursement payment made directly to the program participant; or

(2) Upon receipt of an assignment of payment from the program participant, a payment made directly to the technical service provider.

(e) The Department will identify in the particular program contract or agreement the payment provisions for technical service providers hired directly by the program participant.

(f) Unless authorized under paragraph (g) of this section, the program participant must enter into a program contract or agreement with the Department prior to acquisition of technical services by a technical service provider.

(g) A program participant may be reimbursed for technical service provider costs incurred prior to entering into a program contract or agreement as long as the individual meets the eligibility requirements for participating in the program. These costs include program related activities that need to be accomplished prior to entering into a program contract or agreement as well as the development of a conservation plan that is subsequently incorporated into the program contract or agreement. To be reimbursed for these technical service provider costs, the program participant must:

(1) Utilize the services of a certified technical service provider from the NRCS approved list of technical service providers; and

(2) Provide to NRCS invoice and related documentation of the technical services provided.

(h) Program participants must authorize in writing to the Department the disclosure of their records on file with the Department that they wish to make available to specific technical service providers.

(i) Payments for technical services will only be made one time for the same technical service provided unless, as determined by the Department, the emergence of new technologies or major changes in the participant's farming or ranching operations necessitate the need for additional technical services.

#### **§ 652.6 Department delivery of technical services.**

(a) The Department may procure the services of certified technical service providers through a contract or a contribution agreement to assist the Department in providing technical services necessary to develop and implement the conservation programs subject to this part. The Department shall only enter into a contribution agreement with a certified technical service provider if the certified

technical service provider contributes at least 50 percent of the technical services needed to accomplish the goals of the project under which the contribution agreement is entered. The Chief may establish minimum contribution rates or limit the utilization of contribution agreements.

(b) The Department may also enter into a cooperative agreement after competition as specified by part 3015 of this title if the principal purpose of the cooperative agreement is to transfer a thing of value to carry out a public purpose of support or stimulation authorized by law. The Chief or the Administrator, Farm Service Agency (FSA) may limit the utilization of cooperative agreements by NRCS or FSA, respectively. Only the Chief, NRCS or the Administrator, FSA may make a determination that competition is not deemed appropriate for a particular transaction and such determination shall only be based where a non-competitive award is in the best interest of the Government and necessary to the accomplishment of the goals of the program.

(c) A certified technical service provider, or an individual providing technical services under the auspices of a technical service provider's certification, shall not be eligible to receive payment under a program contract or agreement for technical services provided directly to a program participant if that technical service provider has entered into a contract, cooperative agreement, or contribution agreement with NRCS to provide technical services to that program participant.

(d) The Department will, to the extent practicable, ensure that the amounts paid for technical service under this part are consistent across conservation program areas, unless specific conservation program requirements include additional tasks.

#### **§ 652.7 Quality assurance.**

(a) NRCS will review, in consultation with the Farm Service Agency, as appropriate, the quality of the technical services provided by technical service providers. As a requirement of certification, technical service providers will be required to develop and maintain documentation in accordance with Departmental manuals, handbooks, and technical guidance for the technical services provided, and furnish this documentation to NRCS and the program participant when the particular technical service is completed. NRCS may utilize information obtained through its quality assurance process, documentation submitted by the

technical service provider, and other relevant information in determining how to improve the quality of technical service, as well as determining whether to decertify a technical service provider under subpart C of this part.

(b) Upon discovery of a deficiency in the provision of technical service through its quality assurance process or other means, NRCS will, to the greatest extent practicable, send a notice to the technical service provider detailing the deficiency and requesting remedial action by the technical service provider. Failure by the technical service provider to promptly remedy the deficiency, or the occurrence of repeated deficiencies in providing technical services, may trigger the decertification process set forth in subpart C of this part. A failure by NRCS to notice any deficiency does not affect any action under the decertification process. Technical service providers are solely responsible for providing technical services that meet all NRCS standards and specifications.

#### **Subpart B—Certification**

##### **§ 652.21 Certification criteria and requirements.**

(a) To qualify for certification an individual must:

(1) Have the technical training, education, or experience to perform the level of technical assistance for which certification is sought;

(2) Meet any applicable licensing or similar qualification standards established by State law;

(3) Demonstrate, through documentation of training or experience, familiarity with NRCS guidelines, criteria, standards, and specifications as set forth in the applicable NRCS manuals, handbooks, field office technical guides, and supplements thereto for the planning and applying of specific conservation practices and management systems for which certification is sought; and

(4) Not be decertified in any State under subpart C of this part at the time of application for certification.

(b) To qualify for certification an entity or public agency must have a certified individual providing, in accordance with this part, technical services on its behalf.

(c) A technical service provider, as part of the certification by NRCS, must enter into a Certification Agreement with NRCS specifying the terms and conditions of the certification, including adherence to the requirements of this part, and acknowledging that failure to meet these requirements may result in ineligibility to receive payments from

the Department, either directly or through the program participant, for the technical services provided or may result in decertification.

(d) NRCS certification shall be in effect for three years unless the technical service provider is decertified in accordance with subpart C of this part. NRCS certifications expire at the end of three years unless they are renewed in accordance with § 652.25.

(e) NRCS may, pursuant to 31 U.S.C. 9701, establish and collect fees for the certification of technical service providers.

(f) An individual, private-sector entity, or public agency is conditionally certified provided they had entered into a contract, cooperative agreement, or contribution agreement with the Department prior to November 21, 2002 to provide technical services and they submit an Application for Certification by March 1, 2003. An individual, private-sector entity, or public agency with conditional certification status under this paragraph may continue to provide technical services in accordance with the terms and conditions of the above-described contract, cooperative agreement, or contribution agreement. Conditional certification shall expire either by the date NRCS and the individual, private-sector entity, or public agency enter into a Certification Agreement, as described in § 652.22(c)(1) or September 30, 2003, whichever is earlier.

(g) An individual is conditionally certified if the individual was certified under NRCS policy in effect prior to November 21, 2002 and submits an Application for Certification by March 1, 2003. An individual with conditional certification status under this paragraph may continue to provide technical services to the Department and to program participants in accordance with the above-described prior certification. Conditional certification shall expire either by the date NRCS and the individual enter into a Certification Agreement, as described in § 652.22(c)(1) or September 30, 2003, whichever is earlier.

##### **§ 652.22 Certification process for individuals.**

(a) In order to be considered for certification as a technical service provider, an individual must:

(1) Submit an Application for Certification to NRCS in accordance with this section;

(2) Request certification through a recommending organization pursuant to § 652.25; or

(3) Request certification through an application submitted by a private-

sector entity or public agency pursuant to § 652.23 or § 652.24 as appropriate.

(b) The application must contain the documentation demonstrating that the individual meets all requirements of paragraph (a) of § 652.21.

(c) NRCS will review within 60 days the application submitted by an individual under paragraph (a)(1) of this section and determine whether the applicant meets the requirements set forth in paragraph (a) of § 652.21. If all requirements are met, NRCS will:

(1) Enter into a Certification Agreement and certify the applicant as qualified to provide technical services for a specific category or categories of technical service;

(2) Place the applicant on the list of approved technical service providers when certified; and

(3) Make available to the public the list of approved technical service providers by category of technical services.

(d) NRCS may decertify an individual in accordance with the decertification process set forth in subpart C of this part.

**§ 652.23 Certification process for private-sector entities.**

(a) A private sector entity that applies for certification must identify, and provide supporting documentation, that an individual, or individuals, authorized to act on its behalf:

(1) Has been certified as an individual in accordance with § 652.22; or

(2) Seeks certification as an individual as part of the private-sector entity's certification and ensures that the requirements set forth in § 652.21(a) are contained within the private-sector entity's application to support such certification.

(b) NRCS will determine whether the individual(s) identified in the private-sector entity's application meets the certification standards set forth in § 652.22 for the specific services the entity wishes to provide.

(c) NRCS will review within 60 days the application submitted by an entity. If NRCS determines that all requirements for the private-sector entity and the identified individual(s) are met, NRCS will complete the actions described in paragraphs (c)(1) through (c)(3) of § 652.22. The Certification Agreement entered into with the private-sector entity shall:

(1) Identify the certified individuals who are authorized to perform technical services on behalf of and under the auspices of the entity's certification;

(2) Require that the entity have, at all times, an individual who is a certified technical service provider authorized to act on the entity's behalf;

(3) Require that the entity promptly provide to NRCS for NRCS approval an amended Certification Agreement when the list of certified individuals performing technical services under its auspices changes;

(4) Require that any work performed by non-certified individuals be warranted by a certified individual who is authorized to act on the entity's behalf; and

(5) Require that the entity assume liability for the quality of work performed by any individual working under the auspices of its certification.

(d) NRCS may, in accordance with the decertification process set forth in this part, decertify the private sector entity, the certified individual(s) acting under the auspices of its certification, or both the private sector entity and the certified individual(s) acting under the auspices of its certification.

**§ 652.24 Certification process for public agencies.**

(a) A public agency that applies for certification must identify, and provide supporting documentation, that an individual or individuals authorized to act on its behalf:

(1) Has been certified as an individual in accordance with § 652.22; or

(2) Seeks certification as an individual as part of the public agency's certification and sufficient information as set forth in § 652.21(a) is contained within the public agency's application to support such certification.

(b) NRCS shall determine whether the individual identified in the public agency's application meets the certification standards set forth in § 652.22.

(c) NRCS will review within 60 days the application submitted by a public agency. If NRCS determines that all requirements for the public agency and the identified individual(s) are met, NRCS will perform the actions described in paragraph (c)(1) through (c)(3) of § 652.22. The Certification Agreement entered into with the public agency shall:

(1) Identify the certified individuals that are authorized to perform technical services on behalf of and under the auspices of the public agency's certification;

(2) Require that the public agency have, at all times, an individual that is a certified technical service provider and is an authorized official of the public agency;

(3) Require that the public agency promptly provide to NRCS for NRCS approval an amended Certification Agreement when the list of certified

individuals performing technical services under its auspices changes;

(4) Require that any work performed by non-certified individuals be warranted by a certified individual that is authorized to act on the public agency's behalf;

(5) Require that the public agency assume liability for the quality of work performed by any individual working under the auspices of its certification; and

(6) Prohibit any individual who provides technical services under the auspices of the public agency's certification from providing services to program participants and the Department as an individual or part of a private-sector entity.

(d) NRCS may, in accordance with the decertification process set forth in subpart C of this part, decertify the public agency, the certified individual(s) acting under its auspices, or both the public agency and the certified individual(s) acting under its auspices.

**§ 652.25 Alternative application process for individual certification.**

(a) NRCS may enter into an agreement, including a memorandum of understanding or other appropriate instrument, with a recommending organization that NRCS determines has an adequate accreditation program in place to train, test, and evaluate candidates for competency in a particular area or areas of technical service delivery and whose accreditation program NRCS determines meets the certification criteria as set forth for the technical services to be provided.

(b) Recommending organizations will, pursuant to an agreement entered into with NRCS:

(1) Train, test, and evaluate candidates for competency in the area of technical service delivery;

(2) Recommend to the NRCS official individuals who it determines meet the NRCS certification requirements of § 652.21(a) for providing specific categories of technical services;

(3) Inform the recommended individuals that they must meet the requirements of this part, including entering into a Certification Agreement with NRCS, in order to provide technical services under this part;

(4) Reassess individuals that request renewal of their certification pursuant to § 652.26 through the recommendation of the organization; and

(5) Notify NRCS of any concerns or problems that may affect the organization's recommendation concerning the individual's

certification, recertification, certification renewal, or technical service delivery.

(c) Pursuant to an agreement with NRCS, a recommending organization may provide to the appropriate NRCS official a current list of individuals identified by the recommending organization as meeting NRCS criteria as set forth in § 652.21(a) for specific categories of technical service and recommend that the NRCS official certify these individuals as technical service providers in accordance with this part.

(d) NRCS will make a determination within 60 days. If NRCS determines that all requirements for certification are met by the recommended individual(s), NRCS will perform the actions described in paragraphs (c)(1) through (c)(3) of § 652.22.

(e) NRCS may terminate an agreement with a recommending organization if concerns or problems with its accreditation program, its recommendations for certification, or other requirements under the agreement arise.

#### **§ 652.26 Certification renewal.**

(a) NRCS certifications are in effect for three years and automatically expire unless they are renewed for an additional three years in accordance with this section.

(b) A technical service provider may request renewal of an NRCS certification by:

(1) Submitting a complete certification renewal application to NRCS or through a private sector entity, a public agency, or a recommending organization to NRCS at least 60 days prior to expiration of the current certification;

(2) Providing verification on the renewal form that the requirements of this part are met; and

(3) Agreeing to abide by the terms and conditions of a Certification Agreement.

(c) All certification renewals are in effect for three years and may be renewed for subsequent three-year periods in accordance with this section.

### **Subpart C—Decertification**

#### **§ 652.31 Policy.**

In order to protect the public interest, it is the policy of NRCS to maintain certification of those technical service providers who act responsibly in the provision of technical service, including meeting NRCS standards and specifications when providing technical service to program participants. This section, which provides for the decertification of technical service providers, is an appropriate means to implement this policy.

#### **§ 652.32 Causes for decertification.**

A State Conservationist, in whose State a technical service provider is certified to provide technical service, may decertify the technical service provider, in accordance with these provisions, for the following reasons:

(a) Failure to meet NRCS standards and specifications in the provision of technical services rendering to the extent that the practice is ineffective or environmentally harmful;

(b) Violation of the terms of the Certification Agreement, including but not limited to, a demonstrated lack of understanding of, or an unwillingness or inability to implement, NRCS standards and specifications for a particular practice for which the technical service provider is certified, or the provision of technical services for which the technical service provider is not certified; and

(c) Any other cause of a serious or compelling nature as determined by NRCS that demonstrates the technical service provider's inability to fulfill the terms of the Certification Agreement in providing technical service.

#### **§ 652.33 Notice of proposed decertification.**

The State Conservationist will send by certified mail, return receipt requested, to the technical service provider proposed for decertification a written Notice of Proposed Decertification, which will contain the cause(s) for decertification, as well as any documentation supporting decertification. In cases where a private sector entity or public agency is being notified of a proposed decertification, any certified individuals working under the auspices of such organization who are also being considered for decertification will receive a separate Notice of Decertification and will be afforded separate appeal rights following the process set forth below.

#### **§ 652.34 Opportunity to contest decertification.**

To contest decertification, the technical service provider must submit in writing to the State Conservationist, within 20 calendar days from the date of receipt of the Notice of Proposed Decertification, the reasons why the State Conservationist should not decertify, including any mitigating factors as well as any supporting documentation.

#### **§ 652.35 State Conservationist decision.**

Within 30 calendar days from the date of the notice of proposed decertification, the State Conservationist will issue a written determination. If the State

Conservationist decides to decertify, the decision will set forth the reasons for decertification, the period of decertification, and the scope of decertification. If the State Conservationist decides not to decertify the technical service provider, the technical service provider will be given written notice of that determination. The decertification determination will be based on an administrative record, which will be comprised of: The Notice of Proposed Decertification and supporting documents, and, if submitted, the technical service provider's written response and supporting documentation. Both a copy of the decision and administrative record will be sent promptly by certified mail, return receipt requested, to the technical service provider.

#### **§ 652.36 Appeals of decertification decisions.**

(a) Within 20 calendar days from the date of receipt of the State Conservationist's decertification determination, the technical service provider may appeal, in writing, to the Chief of NRCS. The written appeal must state the reasons for appeal and any arguments in support of those reasons. If the technical service provider fails to appeal, the decision of the State Conservationist is final.

(b) *Final decision.* Within 30 calendar days of receipt of the technical service provider's written appeal, the Chief or his designee, will make a final determination, in writing, based upon the administrative record and any additional information submitted to the Chief by the technical service provider. The decision of the Chief, or his designee, is final and not subject to further administrative review. The Chief's determination will include the reasons for decertification, the period of decertification, and the scope of decertification.

#### **§ 652.37 Period of decertification.**

The period of decertification will not exceed three years in duration and will be decided by the decertifying official, either the State Conservationist or Chief, as applicable, based upon their weighing of all relevant facts and the seriousness of the reasons for decertification, mitigating factors, if any, and the following general guidelines:

(a) For failures in the provision of technical service for which there are no mitigating factors, *e.g.*, no remedial action by the technical service provider, a maximum period of three years decertification;

(b) For repeated failures in the provision of technical assistance for

which there are mitigating factors, *e.g.*, the technical service provider has taken remedial action to the satisfaction of NRCS, a maximum period of one to two years decertification; and

(c) For a violation of certification agreement terms, *e.g.*, failure to possess technical competency for a listed practice, a period of one year or less, if the technical service provider can master such competency within a year period.

#### § 652.38 Scope of decertification.

(a) When the technical service provider is a private sector entity or public agency, the decertifying official may decertify the entire organization, including all the individuals identified as authorized to provide technical services under the auspices of such organization. The decertifying official may also limit the scope of decertification, for example, to one or more specifically named individuals identified as authorized to provide technical services under the organization's auspices or to an organizational element of such private sector entity or public agency. The scope of decertification will be set forth in the decertification determination and will be based upon the facts of each decertification action, including whether actions of particular individuals can be imputed to the larger organization.

(b) In cases where specific individuals are decertified only, an entity or public agency must promptly file an amended Certification Agreement removing the decertified individual(s) from the Certification Agreement. In addition, the entity or public agency must demonstrate, to the satisfaction of the State Conservationist, that the entity or public agency has taken affirmative steps to ensure that the circumstances resulting in decertification have been addressed.

#### § 652.39 Mitigating factors.

In considering whether to decertify, the period of decertification, and scope of decertification, the deciding official will take into consideration any mitigating factors. Examples of mitigating factors include, but are not limited to the following:

(a) The technical service provider worked, in a timely manner, to correct any deficiencies in the provision of technical service;

(b) The technical service provider took the initiative to bring any deficiency in the provision of their technical services to the attention of NRCS and sought NRCS advice to remediate the situation; and

(c) The technical service provider took affirmative steps to prevent any failures in the provision of technical services from occurring in the future.

#### § 652.40 Effect of decertification.

(a) The Department will not make payment under a program contract for the technical services of a decertified technical service provider that were provided during the period of decertification. Likewise, NRCS will not procure the services of a decertified technical service provider during the period of decertification.

(b) *National decertification list.* NRCS will maintain a list of decertified technical service providers. NRCS will remove decertified providers from the list of certified providers. Program participants must not knowingly hire a decertified technical service provider. It is the program participant's responsibility to check the decertified list before hiring a technical service provider. Decertification of a technical service provider in one State decertifies the technical service provider from providing technical services under current programs in all States, the Caribbean Area, and the Pacific Basin Area.

#### § 652.41 Effect of filing deadlines.

A technical service provider's failure to meet the filing deadlines under this subpart will result in the forfeiture of appeal rights. All filings must be received by NRCS no later than the close of business (5 p.m.) the last day of the filing period.

#### § 652.42 Recertification.

A decertified technical service provider may apply to be re-certified under the certification provisions of this part after the period of decertification has expired. A technical service provider may not utilize the certification renewal process in an attempt to be recertified after being decertified.

Signed in Washington, DC, on November 7, 2002.

**Bruce I. Knight,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. 02-29301 Filed 11-20-02; 8:45 am]

**BILLING CODE 3410-16-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 905

[Docket No. FV02-905-5 FIR]

### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee) administers the order locally and recommended this action. This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2002-03 season by continuing in effect the weekly percentages established for each of the 22 weeks, beginning September 16, 2002. This action supplies enough small red seedless grapefruit, without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns.

**EFFECTIVE DATE:** December 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884-1671; telephone: (863) 324-3375, Fax: (863) 325-8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905),